

MEMORANDUM OF UNDERSTANDING
City of Burlington - Burlington Harbor Marina, LLC

This Memorandum of Understanding (this "MOU") is dated this ____ day of May, 2015, by and between the City of Burlington, a Vermont municipal corporation (the "City"), and Burlington Harbor Marina, LLC, a limited liability company organized under the laws of the State of Vermont ("BHM").

WITNESSETH:

WHEREAS, the City owns (whether directly or through certain of its departments) certain lands on the Burlington waterfront and holds such lands in the public trust; and

WHEREAS, the City wishes to promote the public's access to, and use and enjoyment of, the waterfront and, in this vein, recognizes the need for additional recreational boat dockage and supporting facilities and services in Burlington Harbor; and

WHEREAS, in 2013 the City's Public Investment Action Plan (PIAP) was conceived for the purpose of, and ultimately resulted in, an open public process to select proposed projects that would be eligible to receive public infrastructure improvements through the City's Waterfront Tax Increment Financing (TIF) District; and

WHEREAS, BHM submitted one of fifty proposals that came from private and public entities in response to the PIAP open request for proposals for future waterfront development; and

WHEREAS, BHM proposed a PIAP project which contemplated BHM undertaking significant private investment to develop, construct and operate Burlington Harbor Marina (the "Marina"), consistent with the City's long-term goals for providing additional boating access to the lake; and

WHEREAS, BHM proposal for the Marina was ultimately selected as a PIAP project which projected an anticipated need for \$500,000 of TIF improvements; and

WHEREAS, consistent with one of the statutorily established purposes for which tax increment financing is to be utilized, the parties recognize that the addition of a new privately owned and operated marina to the Burlington waterfront will improve and broaden the tax base, as a substantial addition to the City's grand list, as well through generation of additional tax revenues; and

WHEREAS, in March 2014, the City voters approved a measure for the City Council to authorize up to \$9.6 million of financing for TIF infrastructure in support of the selected PIAP projects, including the Marina; and

WHEREAS, the City recognizes that the proposed Marina would provide additional access to Lake Champlain for Burlington residents and visitors, contributing to the vitality of the City's waterfront, and the City is prepared to take measured, reasonable steps, consistent with its responsibilities with respect to lands held in the public trust, to facilitate BHM's development of the Marina; and

WHEREAS, the City and BHM have engaged in a series of discussions regarding the parameters of BHM's proposed Marina project, which discussions have contemplated that the City and BHM will ultimately enter into a development agreement (the "Development Agreement") and long-term ground lease of the property (the "Lease") which will serve as the site for future Marina operations; and

WHEREAS, the development of the Marina can be a valuable source of economic development and job creation for the City of Burlington, adding vibrancy of the City's downtown and emerging waterfront; and

WHEREAS, the parties agree that it is in their respective best interests to execute this MOU to outline their shared understanding of the preliminary terms relating to the Marina project and working toward the adoption of a Development Agreement and Lease, such that each of the parties may in good faith proceed henceforth in reliance thereon;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises set forth herein, the parties agree as follows:

Section 1. Exclusivity

While this MOU is in effect, the parties will work in good faith to work toward the execution of the Development Agreement. During this time, the City agrees to work exclusively with BHM as the developer of the Marina.

Section 2. Marina Project Overview

The parties agree to work in good faith toward execution of the Development Agreement and the Ground Lease with the understanding that the proposed the Marina is expected to include the following improvements:

- Newly Constructed Wave Attenuation System
- Up to 160 Boat Slips (subject to approval by the Harbormaster) – a minimum of 40% of which shall be offered to transient boaters on a daily weekly, or monthly basis;
- Pumpout Facilities
- Provision for Water Taxi Stand;
- A Floating Marina Facility to include:
 - Management and staff offices;
 - Public Restrooms;
 - Guest Bathing and Laundry facilities;
 - Store & Chandlery;
- Dockmaster Facility
- Public Park / Plaza and newly constructed Lakefront Pavilion adjacent to existing Fishing Pier
- Short-Term / Drop-off Parking Area
- Marina parking area located between the water treatment facility and the Coast Guard (Area A on Exhibit A
- Marina access, support infrastructure, staging, storage, and facilities area (Area E on Exhibit A) which will also provide for future boat launching and hauling facilities and will be used as event space.

Section 3. Proposed Marina Site & Master Plan

As currently proposed, the Marina and rights-of-way necessary to operate the project are as depicted in Exhibit A (the Site Plan).

The Marina will be accessed using lake frontage in the general location of the existing City owned picnic pavilion and connected by a City owned right-of-way to a portion of the existing parking area (and yard) east of the Water and Electric Department Buildings on Penny Lane (see Section X for pavilion relocation details).

The preliminary design and plans for the Marina's wave attenuation and dock systems are also depicted in Exhibit A.

The Marina's master plan will include the creation of a public lakefront plaza on the land located directly to the west of the Burlington Electric Building (The New Lakefront Plaza). The New Lakefront Plaza will

include a newly constructed and relocated Pavilion as well as other park-like improvements (i.e. landscaping, benches, etc).

Section 4. Parking

A) Dedicated Marina Parking: Subject to receiving all necessary permits, approximately 25-30 spaces will be located within the corridor of land between the Coast Guard and Burlington Water Department Buildings. These dedicated parking spaces would be located on lands owned by the City and ground leased to BHM for dedicated Marina use. BHM will bear the cost of upgrading the parking area including engineering, permitting and construction. The City will provide replacement spaces for the Water Department Vehicles currently parked there.

B) Shared Water Department Parking: The existing Water Department employee lot will be made available to BHM for exclusive use on weekends and Holidays during the season. These spaces are currently available to the public free during off hours but would be made exclusively available to the Marina for an agreed upon rate.

C) Drop off parking – 6 spaces of the parking plaza constructed for the relocated Pavilion would be designated for Marina use.

D) The City will provide access to the remaining number of parking spaces necessary for the Marina to meet the requirements of Planning & Zoning (the manner of such access to be more specifically described in the Development Agreement). The City will make best efforts to accommodate the Marina's parking needs, with the understanding that a significant percentage of Marina users shall be transient guests, therefore requiring very limited or no parking. Marina parking can be located within city owned surface parking lots, on-street metered parking, or other city owned parking areas within 1/4 mile radius of the Marina. The parties will work in good faith to draft a detailed parking plan based on recommended plan for downtown parking from the Burlington City Parking Committee as part of the Development Agreement.

Section 5. Due Diligence Period

The City shall grant BHM a 90-day period commencing upon the execution of this Memorandum of Understanding and terminating no later than July 31, 2015 (the "Due Diligence Period") to conduct the necessary investigations to further refine and update the Marina's program, site plan, schedule, and economic considerations necessary to achieve project feasibility.

During the Due Diligence Period, BHM shall provide the City with a written report of its findings (the "Findings Report"). This written report shall include the following information:

- 1) Detailed written description of the proposed Marina development and operation plans;
- 2) Preliminary Site Plan reflecting the narrative outlined above;
- 3) Schematic Building Elevations for Floating Marina Facility;
- 3) Marina Operating Budget (to Net Income after debt service);
- 4) Marina Project Proforma;
- 5) Updated Project Schedule;
- 6) Description of (and Commitment to) Public Access;
- 7) Preliminary Meeting and initial feedback from Planning and Zoning Staff;
- 8) Letter of Support from Harbormaster / Burlington Park and Recreation for the proposed Marina dock location(s) and Pavilion Relocation Plan;
- 9) Letter of Support from the Director of Public Works relating to impacts on the operations of the Water Department; and

During the Due Diligence Period, the City shall retain consulting services to assess the potential impact of the Marina on the adjacent water treatment facility, including but not limited to, analyzing future water treatment facility expansion as well as verifying that current operations will not be unduly impacted by the marina.

CEDO shall coordinate and schedule three (3) meetings at thirty (30) day intervals, between BHM and the Director of Public Works relating to the delivery of its Letter of Support, referred to above. These meetings shall be used for the purposes of providing updates to BHM as to any studies that the City undertakes relative to impacts on the operations of the Water Department and for the City and BHM to collaborate in good faith where reasonable regarding concerns raised by such studies.

CEDO shall be responsible, on behalf of the City, for reviewing the Findings Report and submitting a communication to City Council within 15 days of receipt of the Findings Report with its project assessment and notification as to whether the Project is proceeding to the steps outlined in Sections 7 and 8 below.

Section 6. Development Agreement

The parties hereby agree to commence work collaboratively to prepare a draft Development Agreement during the Due Diligence Period. The fundamental terms of the Development Agreement shall be based upon the attached Development Agreement Term Sheet (Exhibit B).

The Development Agreement will define the key business and legal terms for the period prior to the Lease Term between the City and BHM, outline the parameters for the development and operation of the Marina, and define the respective roles and responsibilities of each party moving forward and will contain the final Lease form and preconditions for execution of the Lease. The parties shall use good faith efforts to finalize the Development Agreement, with a final Development Agreement targeted to be approved by City Council by September 15, 2015.

Items to be addressed within the Development Agreement may include, but are not be limited to the following:

- Definition of Development Program,
- Definition of Marina Operations and Agreed Upon Parameters
- Future Development/Expansion Rights
- Future expansion of the City's water treatment facility, adjacent to Marina
- City Funding Obligations & Conditions (PIAP, TIF, etc),
- Pavilion Relocation Agreement,
- Property Tax Agreement,
- Permitting Responsibilities,
- Design Review & Coordination Protocol,
- Environmental Remediation Protocol,
- Parking Plan
- Public Access Agreement,
- Infrastructure & Utility Maintenance Agreement
- Definition of TIF Eligible Reimbursements
- Projected TIF Draw Schedule
- City's Pre-conditions for Closing / Execution of Ground Lease
- Financing Contingency
- Permitting Contingency
- Completion Guarantee
- Closing Date & Other Relevant Deadlines
- Ground Lease
- Parking Agreement

Section 7. Lease Terms & Conditions

The Lease terms and conditions, including but not limited to rent provisions, lease term, and renewal options will be negotiated by the parties after the completion of the Due Diligence Period and the City's review of BHM Findings Report. The parties anticipate, however, structuring the rent as outlined on the Term Sheet, attached as Exhibit B. Updated information and financials provided within BHM's Findings Report shall assist the City in determining Lease terms that are commercially reasonable. As noted above, the terms and key provisions of the Lease shall be outlined within the Development Agreement along with a final unexecuted form of Lease that shall be included as an exhibit to the Development Agreement.

The City's pre-conditions for executing the Lease will be outlined in the Development Agreement and shall include, but may not be limited to, BHM having secured all the necessary permits to construct and operate the project (including subsequent appeal periods); BHM securing financing commitments to develop the Marina; and BHM providing a Completion Guarantee for the agreed upon scope of work.

Section 8. Waterfront Access North (WAN)

The parties acknowledge that the WAN project is designed to provide important infrastructure improvements to the City's northern waterfront. The WAN project, currently under construction, is a fully permitted, federally funded project. In the event that BHM anticipates at any time that its infrastructure needs for development of the Marina project are beyond the scope of the WAN project, the City and BHM shall discuss in good faith making appropriate changes to the WAN project, provided that any such change shall be agreed to by the City in its sole discretion and BHM shall bear the sole cost of any such change (including WAN permit modifications as well as hard and soft costs incurred).

Section 9. Pavilion Relocation Agreement

The parties acknowledge that BHM's current plan incorporates land owned by the City (and managed by Burlington Parks & Recreation) that is currently utilized for a lakefront picnic pavilion. As part of their development plans, BHM would remove this structure, and rebuild a new picnic pavilion located within the New Lakefront Plaza. The design, specifications, location, and construction schedule for the rebuilding of the picnic pavilion shall be subject to Burlington Parks & Recreation approval. BHM will be responsible for all permitting, design, and construction costs related to the Pavilion relocation. The City will be responsible for replacement parking required by any permitting authority due to the loss of existing spaces in the proposed greenspace. A Pavilion Relocation Agreement shall be included in the Development Agreement.

Section 10. Tax Increment Financing (TIF) Funding Considerations

The City will provide up to \$500,000 in funds for TIF eligible public infrastructure to support the project. The TIF funding process will be clearly defined and outlined within the Development Agreement.

Section 11. Bond Counsel Review & Approval

The TIF funding plan outlined above shall be subject to the review and approval of the City's bond counsel and may be subject to change.

Section 12. Land Use Permitting

The parties acknowledge and are both committed to cooperating with each other and the Vermont Department of Environment Conservation, the U.S. Army Corps of Engineers and other permitting agencies to complete the Marina project.

BHM shall bear the responsibility and all costs necessary to secure the permits needed to the construct and operate the Marina (including any necessary off-site improvements). BHM shall compensate the City for any design, permit and construction costs incurred by the City relative to improvements to the Property (including any necessary off-site improvements) provided that the costs are approved by BHM in advance.

Section 13. Public Trust Doctrine

The parties agree and acknowledge that the City has certain responsibilities with respect to lands that have been dedicated to the public trust. BHM agrees to work in good faith with the City and to take such reasonable actions as may be necessary or appropriate to enable the City to carry out its responsibilities under the public trust doctrine, and agrees that the Marina project is intended promote the public's access to, and use and enjoyment of, the Burlington Waterfront and to further the purposes of the public trust doctrine.

Section 14. Public Access Agreement

The parties shall execute a Public Access Agreement that will be an exhibit to the Development Agreement. The Public Access Agreement will clearly define BHM's public access obligations as required by the City for the development and operation of the Marina.

Areas of the Marina that will be open, during daytime hours, to pedestrians and the general public (not solely Marina clientele) include, but may not be limited to, the public restroom facilities; store and chandlery; sales / rental / brokerage area; food and beverage and event space (when not leased for private events); and water taxi stand. It is also agreed that the Marina's entire perimeter dock (i.e. the wave attenuation system) shall be open to the general public daily from 7am to 10pm. This area is depicted in Exhibit XX.

The Public Access Agreement will also take into consideration necessary security measures as typically found within public marinas (which may include the limited use of card entry systems in agreed upon locations and security cameras).

Section 15. Stakeholder Cooperation

To successfully execute and operate the Marina Project, the City and BHM recognize the need to coordinate with other Waterfront property owners and stakeholders, including, but not limited to the Lake Champlain Transportation Company, The United States Coast Guard, Lake Champlain Community Sailing Center, and Burlington Parks & Recreation Department.

Section 16. Wind & Wave Engineering Study

Both the City and BHM are seeking a consulting engineer to prepare a Wind & Wave Study for the Burlington waterfront. The results of this engineering study can be used for the design of both the Marina's wave attenuation systems as well as improvements currently being considered for the City's breakwater system in the Southern harbor. As such, the parties agree to work cooperatively to gain cost efficiencies to complete this work. The details related to the Wind & Wave Study shall be determined during the Due Diligence Period.

Section 17. South Harbor Marina

The parties acknowledge that the City may also provide future support toward the development of a marina located in the City's southern harbor adjacent to Perkins Pier, notwithstanding anything in Section 1 of this MOU to the contrary.

Section 18. Assignment Rights

The rights provided to BHM under the terms of the MOU, Development Agreement and Lease shall not be assigned without the written consent of the City, which shall not be unreasonably withheld. It is understood that BHM will need to be able to collaterally assign the Lease to its primary lender for financing purposes and that the City will pre-approve this right. Specific details to be included in the Development Agreement and/or the Lease.

Section 19. Stormwater Management

The parties will work in good faith to assess the stormwater management needs of the Marina with the understanding that stormwater management infrastructure was permitted and is being constructed as part of the WAN project (The WAN Stormwater Improvements). The WAN Stormwater Improvements (WSI) were designed and permitted to service multiple projects and infrastructure improvements within the WAN development area, and will likely be adequate to service the Marina project (depending on the project's final design and area of impervious surface). As such, the Development Agreement (and/or ground lease) shall explicitly address the Marina's long-term financial responsibility for assuming its prorata share of the necessary stormwater system operation and maintenance costs; stormwater system inspection costs; state stormwater operational permit fees; as well as the city's stormwater fees relating to impervious area. BHM's prorata share would be determined using pre vs post development runoff calculations impacting WSI and be limited to its share of costs not covered by existing stormwater fees or permit impact fees relating to stormwater. While unlikely, if the stormwater management needs of the Marina exceed the capacity of the WAN Stormwater Improvements, BHM shall be solely responsible for permitting and constructing the improvements necessary to meet city, state, and federal stormwater guidelines.

Section 20. Miscellaneous Provisions

- a) BHM will bear all utility and maintenance costs relative to the leased property (including improvements thereon), including any costs for services provided by the City as landlord under the Lease, unless such costs are paid through taxes or a payment in lieu of taxes. Any such costs will be specifically identified in the Development Agreement though it is anticipated that BHM will be responsible for arranging for its own utilities and maintenance services.
- b) BHM shall maintain insurance at levels specified in the Development Agreement, with the City named as additional insured and loss payee.
- c) Customary indemnifications as between the parties will be negotiated and included in the Ground lease agreement, including an allocation of risk of remediation of hazardous waste, which shall be specified in the Development Agreement.
- d) The parties shall endeavor to resolve any disputes related to this MOU or the Lease described herein by direct discussions or agreed upon mediation. Any mediation shall be conducted by a mutually agreed upon independent mediator, and the parties shall share the cost of any such mediator equally.
- e) The rights granted to BHM under the Development Agreement shall be limited to the Marina project

and the Development Agreement shall not grant BHM rights to other properties owned by the City,

- f) The parties shall work cooperatively to meet the reporting requirements necessary to meet the annual HUD / BEDI and 108 loan benchmarks. The aforementioned reporting requirements will be further defined in the Development Agreement and incorporated into the ground lease.
- g) Neither the City nor BHM shall be deemed in violation of this MOU if it is prevented from performing any obligations hereunder by reason of strikes, boycotts, labor disputes, acts of God, acts of the public enemy, acts of superior governmental authority, severe weather conditions, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which is not under its control, and the party experiencing force majeure gives written notice to the other party identifying the nature of such force majeure, and when it began.
- h) The parties have executed this MOU solely in their capacity as landlord and tenant and nothing herein is intended to create any joint venture, partnership, co-developer or similar relationship.
- i) This Agreement shall, in any event, be superseded in its entirety by the execution of a Development Agreement. Furthermore, this Agreement in the absence of a Development Agreement, can be terminated by either party, for any reason, at any time after December 31, 2015.

For City:

Miro Weinberger, Mayor
City of Burlington
City Hall
149 Church Street,
Burlington, VT 05401

For BHM:

Jack Wallace
Charles DesLauriers
Managing Members
25 Cherry St
Burlington, VT 05401

Signature page to follow

IN WITNESS WHEREOF, this MOU is executed by the duly authorized officers or representatives of the City of Burlington and Burlington Harbor Marina, LLC as of the day and date first above written.

THE CITY OF BURLINGTON

By: _____
Miro Weinberger, Mayor
Duly Authorized Agent

STATE OF VERMONT
COUNTY of CHITTENDEN, SS.

At Burlington, in said County, on the ____ day of May, 2015, personally appeared, Miro Weinberger, Mayor of the City of Burlington and acknowledges this instrument by him, sealed and subscribed to be his free act and deed, and the free act deed of the City of Burlington.

Before me,

Notary Public

Commission Expires 2/10/2019

Burlington Harbor Marina, LLC

By: _____
Jack Wallace, Managing Member
Duly Authorized Agent

STATE OF VERMONT
COUNTY OF CHITTENDEN, SS.

At Burlington, in said County, on the ____ day of May, 2015, personally appeared, Jack Wallace, Duly Authorized Agent of the Burlington Harbor Marina, LLC, and acknowledges this instrument by him, sealed and subscribed to be his free act and deed, and the free act and deed of the Burlington Harbor Marina, LLC

Before me,

Notary Public

Commission Expires 2/10/2019

**BURLINGTON
HARBOR
MARINA
PHASE I**

ILLUSTRATIVE PLAN

REVISIONS

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